

(CSPK  
no original  
declaration)

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VENETIA K. CARPENTER-ASUI  
A Law Corporation

VENETIA K. CARPENTER-ASUI 6901  
Haseko Center  
820 Mililani Street, Suite 812  
Honolulu, Hawaii 96813  
Telephone: (808) 523-6446  
Facsimile: (808) 523-6727

FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

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SUE BEITIA, CLERK

Attorney for Plaintiff  
PETER G. SEBALA

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

PETER G. SEBALA,

Plaintiff,

vs.

JAMES G. ROCHE, DR.,  
SECRETARY OF THE AIR  
FORCE,

Defendants.

Civil No. 04-00404 SPK-LEK

PLAINTIFF'S CONCISE  
STATEMENT OF FACTS IN  
OPPOSITION TO  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT;  
DECLARATION OF PETER  
SEBALA; DECLARATION OF  
COUNSEL; EXHIBITS A- G;  
CERTIFICATE OF SERVICE

Hearing

Date: January 27, 2006

Time: 10:00 a.m.

Judge: Honorable Samuel P. King

Trial

Date: February 7, 2006

**PLAINTIFF'S RESPONSE TO DEFENDANT'S CONCISE STATEMENT  
OF FACTS**

Pursuant to Local Rule 56.1, of the Local Rules of Practice for the United States District Court for the District of Hawaii, Plaintiff Peter G. Sebala hereby submits his Concise Statement of Facts in opposition to defendant's motion for summary judgment.

**PLAINTIFF'S RESPONSE TO DEFENDANT'S STATEMENT OF FACTS**

1. Undisputed.
2. Undisputed.
3. Undisputed.
4. Undisputed.
5. Undisputed.
6. Undisputed.
7. Undisputed.
8. Undisputed.
9. Unknown. Insufficient information available to confirm.
10. Unknown. Insufficient information available to confirm.
11. Undisputed.
12. Undisputed.
13. Undisputed.
14. Undisputed.
15. Undisputed.
16. Undisputed.
17. Undisputed.

**PLAINTIFF'S CONCISE STATEMENT OF FACTS TO DEFENDANT**

1. On 8/27/49 Plaintiff was born. Def c.s. ex 1; decla Pl.
  
2. From 1970 to 1971, w/ 1 year & 7 months of creditable service, Pl served in the U.S. Army & Vietnam War & received an honorable discharge. Pl was awarded the National Defense Service Medal, Vietnam Service Medal w/ a Bronze Service Star, Republic of Vietnam Campaign Medal, & Sharpshooter (Rifle). Ex C; decla Pl; Def c.s. ex 1.
  
3. From 1967 to 1994 Pl was employed by Oahu Sugar Company for 27 years working in tire maintenance & preventative maintenance. Pl also held the position of Tire Shop Leader with duties including repair and maintenance of tires on all vehicles and equipment in the shop and field; performing scheduled maintenance on all vehicles and equipment including oil and filter changes; inspecting and lubricating chassis components; & conducting training of new employees. Def c.s. ex 5; Decla Pl.
  
4. On 1/23/02 Pl received a full-time 1-year appointment as a Mobile Equipment Servicer WG-5806 working at the Hickam Air Force Base. Def c.s. ex 1; Decla Pl.
  
5. On 8/11/02 Pl's SF-50 rated Pl's performance as a temporary Mobile Equipment Servicer WG-5806 as "[w]ork performance at an acceptable level of competence." Ex B.
  
6. On 10/3/02 Pl's a mid-year Civilian Progress Review Worksheet rated his work successfully, w/ a written comment by his immediate supervisor Randall Nunes which stated, "Good Job!" Def c.s. ex 3.
  
7. From 3/14/03 to 3/20/03 Pl's Mobile Equipment Servicer WG-5806 position, as a "permanent" status, was posted as a Vacancy Announcement. Def c.s. ex 4.

8. Pl applied for the “permanent” Mobile Equipment Servicer WG-5806 position & submitted his resume, which included the work he performed in the “temporary” position right before the Vacancy Announcement was posted. Def c.s. ex 5.
9. In a letter dated 4/7/03 Pl was notified that Christopher Vargas, age 25, was hired for the permanent Mobile Equipment Servicer position instead of Pl, age 53. Def c.s. ex 6.
10. Upon receiving Supervisor Nunes letter dated 4/7/03, Pl telephoned Supervisor Nunes who told Pl that he “hired the most qualified person for the job.” Decla Pl.
11. On 5/4/03 Christopher Vargas, age 25, began working in the permanent Mobile Equipment Servicer WG-5806 position. Def c.s. #11.
12. April-May 2003, Pl’s co-worker Michael Oyadomori asked Supervisor Nunes why he hired Christopher Vargas who was inexperienced for the Mobile Equipment Servicer WG-5806 position. Supervisor Randall Nunes replied “[w]ell the guy younger and he’s married, got family.” Ex F p42,
13. In 4/03 Pl reported age discrimination to: Ex D; Decla Pl.  
Tonya Stels - Hickam Air Force Base Hiring Office,  
Federal Job Information 541-2791 (recording),  
Department of Veterans Affairs,  
Hickam Air Force Base Civilian Personnel Employment  
Office “Greg”, Hickam Air Force Base Civilian Personnel  
Employment Office “Beverly”, Supervisor Randall Nunes,  
Work Links Veterans Outreach Program, Melody Hudson,  
Labor & Hiring Office, Gill Hough, Senator Daniel Akaka,  
Senator Daniel Inouye, Congressman Ed Case,  
Congressman Neil Abercrombie.

14. On 3/16/05 Judge Leslie E. Kobayashi issued an Order Denying Def's Motion to Dismiss based on "untimeliness." Ex E; Decla Pl.

15. Pl was 53 years of age on 5/4/03 when Christopher Vargas age 25 was hired for the permanent Mobile Equipment Servicer WG-5806 job instead of Pl. Def c.s. ex 1; Decla Pl.

16. Pl was qualified for the position of Mobile Equipment Servicer on the date he was not hired 5/4/03. Decla Pl. Def c.s. ex 5.

17. Def did not issue any disciplinary action to Pl while he was employed from 1/23/02-1/22/03. Decla Pl.

18. Def failed to provide any specific example of Pl not being hired due to "prior work experience," "instances of insubordination," and "low performance feedback." Def msj p9-10.

19. The only document Def submitted as evidence of Pl not being hired Supervisor Nunes affidavit dated 9/27/05. Def c.s. ex 7.


20. Supervisor Nunes was aware on 5/4/03 that Plaintiff was an older person than Christopher Vargas. Def c.s. ex 7.

21. Plaintiff did not require training when he was hired for the 1-year Mobile Equipment Servicer job.

22. Defendant did require training by Ace Suares when he was hired for the permanent Mobile Equipment Servicer job. Ex F.

[I certify that there are 868 words in this concise statement according to the software program on my computer.]

DATED: Honolulu, Hawaii, January 9, 2006.

  
VENETIA K. CARPENTER-ASUI  
Attorney for Plaintiff  
PETER G. SEBALA